

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.849 OF 2007

Shri Bharat Shantilal Shah ... Petitioner

Vs.

Mr. Lahanu Damu Pathare & Ors. ... Respondents

Mr. A.P. Mundargi, senior counsel i/b Mr. M.S. Mohite for the petitioner.

Ms. Uma S. Palsuledesai for respondent 1.

Mr. M.S. Mhambrey, A.P.P. for the State.

**CORAM : SMT. RANJANA DESAI &
D. B. BHOSALE, JJ.**

DATED : 26TH JUNE, 2007.

P.C.:-

1. The petitioner has prayed for a direction quashing and setting aside the order dated 20/2/2007 passed by the learned Metropolitan Magistrate, 26th Court, Borivali, Mumbai in C.C. No.35/Misc./2007 as well as MECR No.2/2007 registered at Aarey Police Station against the petitioner. The said order directs the police to investigate the offence under section 156(3) of the Criminal Procedure Code (for short, "the Code").

2. We have heard Mr. Mundargi, the learned senior counsel appearing for the petitioner, Ms. Palsuledesai, the learned counsel appearing for

respondent 1 and Mr. Mhambrey, the learned A.P.P. appearing for the State.

3. It is not possible for us to quash the order directing investigation under section 156(3) of the Code. Our attention is drawn by the learned counsel for the petitioner to the affidavit filed by Mr. Bhimrao Madhavrao Madavi, the Assistant Commissioner of Police, Dindoshi Division, Mumbai. The relevant paragraph of the said affidavit may be quoted :

“8. I say that I have completed the investigation and charge-sheet is to be filed against the accused. I say that I do not require custody of the accused. I say that presence of the accused is required in the concerned Court to enable the police to file charge sheet.”

4. It is clear from the said affidavit that the police do not require the custody of the accused; the investigation is complete; the charge-sheet is ready and the presence of the accused is necessary in the concerned court to file the charge-sheet.

5. Mr. Mundargi, the learned counsel for the petitioner has drawn our attention to the judgment of this court in Mr. Sanjay Narhar Malshe v. State of Maharashtra, 2005 ALL MR (Cri) 1927 wherein this court has taken a view that section 18 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 nowhere debars the Magistrate from exercising the powers under section 437 of the Code whenever facts of the case so demand. He submits that in view of this clear position of law

enunciated by this court, if the petitioner files an application for bail, the learned Magistrate can consider it. He states that in view of the affidavit of Mr. Madavi and in view of the judgment of this court in Mr. Sanjay Narhar Malshe' case (supra), the petitioner desires to file an application for bail before the learned Magistrate. Admittedly, the charge-sheet will be filed on 28/6/2007. He states that the petitioner shall file an application for bail on or before 28/6/2007 and the petitioner shall remain present in the court on 28/6/2007 when charge-sheet is going to be filed. He states that in view of the affidavit filed by the Investigating Officer, this court may extend the protection granted to the petitioner by the learned Single Judge till the learned Magistrate decides the bail application. In the circumstances of the case, in our opinion, the following order will meet the ends of justice.

ORDER

6. The statement made by Mr. Mundargi, the learned counsel appearing for the petitioner that the petitioner shall remain present in the court on 28/6/2007 is accepted by this court. The further statement made by Mr. Mundargi that the petitioner shall file an application for bail before the learned Magistrate is also accepted by this court. If such an application is filed, the learned Magistrate is directed to dispose it of finally on the same day i.e. on 28/6/2007 itself. In view of this, the interim protection granted by the learned Single Judge of this court is extended till 28/6/2007.

AJN

7. We make it clear that we have not expressed any opinion on the merits of the case and all contentions of both sides are kept open.

8. The petition is disposed of.

[SMT. RANJANA DESAI, J.]

[D. B. BHOSALE, J.]